Supreme Court, U.S.
FILED

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No. 02-

IN THE

Supreme Court of the United States

JAMES LEROY WILLIAMS,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioner herein presents a Federal question for review by this Court, wherein petitioner states that the trial court improperly shifted the burden of proof to establish innocence to the petitioner, in violation of petitioner's rights pursuant to the Fifth Amendment.

OPINIONS BELOW

This is an application for review by certiorari, of the unpublished decision of May 10, 2002, wherein the Supreme Court of Virginia denied appellate relief to petitioner, from his conviction in the Circuit Court of Dinwiddie County, Virginia, on a single indictment charging the petitioner with obtaining money by false pretenses. In the Circuit Court for Dinwiddie County, petitioner was sentenced to a term of confinement of two (2) years, upon said conviction.

STATEMENT OF JURISDICTION

The decision of the Supreme Court of Virginia is dated May 10, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the provisions of the Fifth Amendment to the Constitution of the United States, which provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Petitioner was indicted by the Grand Jury of Dinwiddie County, Virginia, wherein it was alleged that petitioner, on or about October 12, 1998, unlawfully and feloniously obtained money by false pretenses, valued at more than $200.00, with the intention to defraud, in violation of Section 18.2-17 of the Code of Virginia, 1950 as amended. To this indictment, petitioner entered a plea of not guilty, and demanded trial by jury. Trial commenced on May 8, 2001, in the Circuit Court of Dinwiddie County. At the conclusion of the proceedings, petitioner was convicted of the offense, and was sentenced to serve a term of two (2) years confinement in the Virginia Department of Corrections. Petitioner filed an appeal to the judgment of the aforesaid Circuit Court, in the Court of Appeals of Virginia. The Court of Appeals of Virginia rendered a decision under Record Number 1237-01-2, wherein said Court affirmed the conviction. Petitioner then filed an appeal to the Supreme Court of Virginia, which by Order dated May 10, 2002, affirmed the conviction. It is from the decision of the Supreme Court of Virginia which petitioner now files his application for certiorari.

Petitioner raised, through counsel at trial, his objection to the introduction of certain evidence wherein the trial court opined that evidence would be heard to contradict the prosecution's proffered evidence. Petitioner takes the position that the trial court, in rendering said judgment, shifted the burden of proof to petitioner. The issue was not presented as a Constitutionally framed issue to the Court of Appeals of Virginia, or to the Supreme Court of Virginia. The issue was preserved by petitioner, through counsel, in his objection to the admissibility of the documentary evidence, which the prosecution succeeded in presenting to the Court. Trial counsel

did not present an issue or argument to the Court of Appeals, or to the Supreme Court of Virginia, specifically raising the issue of a violation of petitioner's Constitutional rights as secured by the Fifth Amendment to the Constitution of the United States of America.

REASONS FOR GRANTING THE WRIT

Petitioner suggests that when the trial court shifted the burden of proof from the prosecution to Petitioner when the trial court stated, "T-61, 9-12." At issue was the admissibility of certain documents relied upon by the Prosecution. The documents were deemed relevant to establish the victim's (insurance company) reservation of rights on insurance coverage. The Due Process Clause requires the prosecution to prove beyond a reasonable doubt every element necessary to establish the crime charged. *Eric Lee Dobson v. Commonwealth*, 260 Va. 71, 531 S.E. 2d 569; *Victor v. Nebraska*, 511 U.S. 1, 5, 127 L. Ed. 2d 583, 114 S. Ct. 1239 (1994); *Sandstrom v. Montana*, 442 U.S. 510, 520, 61 L. Ed. 2d 39, 99 S. Ct. 2450 (1979); *Mullaney*, 421 U.S. at 685; *In re Winship*, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); *Stokes v. Warden*, 226 Va. 111, 117, 306 S.E.2d 882, 885 (1983). In *Dobson*, the court reasoned that the Due Process Clause does not prohibit the use of a permissive inference as a procedural device that shifts to a defendant the burden of producing some evidence contesting a fact that may otherwise be inferred, provided that the prosecution retains the ultimate burden of proof beyond a reasonable doubt. Petitioner contends that the trial judge created an impermissive inference via his statement "we would be glad to hear from any witness that might testify" as to the truth and validity of certain evidence, thus shifting the burden of proof.

Petitioner concedes that although the introduction of any evidence, direct or circumstantial, tending to implicate the accused in the alleged crime increases the pressure on him to testify, the mere massing of evidence against an accused cannot be regarded as a violation of his privilege against self-incrimination *Barnes v. United States*, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380. However in the present matter, the trial judge specifically extended an invitation to "any witness that might testify" to question the validity of a piece of evidence. Since it is highly unlikely that the prosecution would offer a witness that would discredit the prosecution's own evidence, such an invitation to rebut the evidence runs afoul of the defendant's right against self-incrimination. If it is reasonable to believe that a prosecutor will offer a piece of evidence for its truth and offer no other witnesses to call such truthfulness into question, it would logically follow that the court is asking the defendant to come forward with evidence to rebut the truthfulness of the evidence according to the judge's statement.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — DECISION OF THE SUPREME COURT OF VIRGINIA DATED MAY 10, 2002

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of May, 2002.

Record No. 020202
Court of Appeals No. 1237-01-2

James Leroy Williams,

Appellant,

against

Commonwealth of Virginia,

Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court refuses the petition for appeal.

A Copy,
Teste:
David B. Beach, Clerk
By:
Deputy Clerk

APPENDIX B — EXCERPTS FROM HEARING OF CIRCUIT COURT OF COUNTY OF DINWIDDIE DATED MAY 7, 2001

* * *

Mr. Bland: I object to the content of a letter.

The Court: I can's hear you, Mr. Bland.

Mr. Bland: I object to the contents of the letter as it related to what allegedly was said. This is an issue that I did bring up with the Commonwealth. So we are going to object to his reading that letter into the record.

Mr. Rainey: Judge, we are going to move to introduce the letter, the letter is business correspondence.

The Court: Let me see the letter, please.

Mr. Rainey: Sorry, Judge. That was sent to the defendant. He can certainly contest whether it is actual in terms of the facts it contains, but that is a correspondence that was sent to him in the normal course of the business of what the insurance company's position was.

Mr. Bland: Judge —

Mr. Rainey: That will tie to the next piece of evidence. We'll bring in his response.

Mr. Bland: I think he can testify about the content of the letter that he sent, however, the representations made in that letter that certainly may not necessarily be true, so we are certainly going to object to that particular piece of evidence.

Appendix B

The Court: Well, just because it is admissible doesn't necessarily mean that the Commonwealth is relying on everything that is said in here as absolutely true nor does the Court suggest that it is true. But it is admissible it seems to me if Great American sent a letter in the normal course of the business regarding this matter and pertaining to this matter that it is admissible. I am going to admit it.

Mr. Bland: We would respectfully except.

The Court: You can cross examine or put into evidence anything that is contrary to the contents of this letter.

Mr. Bland: Your Honor, for the record, we basically object to the admissibility of that document.

The Court: Okay, it is coming in as the next commonwealth exhibit.

Mr. Bland: I think I have stated that we disagree with the contents in the letter and would let it stand on that for the record.

The Court: We'll be glad to hear anything that is contrary to the information contained in this letter from any witnesses that might testify.

Mr. Rainey: September 2 of '98 would be 5, I believe.

The Court: That is number 5.

Mr. Rainey: All right.

(exhibit 5 was marked)

* * * *